

DISCIPLINARY ACTION

PRIVATE ADMONITION, ODC File No. 2011-0052-B. Date: September 23, 2011.

A Delaware attorney was privately admonished for violations of the Delaware Lawyers' Rules of Professional Conduct. A panel of the Preliminary Review Committee ("PRC") offered the sanction of a private admonition, which was imposed with the consent of the attorney.

The attorney was a sole practitioner, and thus managing partner of a law firm. In January 2010 a client hired the attorney in connection with a sentence modification and paid a retainer. The attorney did not provide the client a written fee agreement. The attorney had supervisory authority over a non-attorney employee to whom the attorney delegated responsibility for the client's sentence modification. During the representation, the client did not meet or otherwise consult with the attorney. The client thought the employee was her attorney, and was led by the employee to believe the attorney had filed a motion for sentence modification, when, in fact, no work on a sentence modification occurred. Nonetheless, the attorney believed the employee had commenced work on such a motion and deposited the retainer into the attorney's operating account. The attorney did not provide the client with a written statement of the fees earned. In May 2010, after numerous unanswered phone calls to the attorney's office, the client learned from the court that the attorney had not filed a motion on her behalf. Around June 2010, the employee informed the client the attorney would not take her case due to new factual circumstances and promised to refund the retainer. However, the client's repeated requests for the refund between June 2010 and January 2011 went unanswered. Although the attorney recalled receiving two phone calls between October and December 2010 regarding the refund, and instructed the employee to meet with the client, that meeting did not occur. After the client filed a complaint about the attorney, the attorney discovered in the client's file an unopened

September 2010 letter to the employee demanding a refund of the retainer. The client never received a refund of the retainer paid. The client subsequently entered into a written fee agreement with the attorney for continued representation, and the attorney filed and obtained a sentence modification.

The attorney violated professional conduct obligations by (1) failing to respond to the client's (a) phone calls and letters regarding the status of the sentence modification, and (b) requests for a refund of the retainer, in violation of **Rule 1.4(a)(3)** and **Rule 1.4(a)(4)**; (2) failing to provide a written fee agreement for the retainer and a statement of the fees earned at the time the attorney deposited the funds into the attorney's operating account in violation of **Rule 1.5(f)**; (3) failing to reasonably safeguard the client's funds by depositing the funds into the attorney's operating account when the fees had not been earned, in violation of **Rule 1.15(a)**; (4) failing to comply with the client's repeated requests for a refund of the retainer, in violation of **Rule 1.15(b)**; and (5) failing to adequately supervise a non-attorney employee with respect to (a) communications with and representations made to the client, (b) filing a motion for a sentence modification, and (c) refunding the client's retainer, in violation of **Rule 5.3**.